

DISCLAIMER

This electronic version of an SCC order is for informational purposes only and is not an official document of the Commission. An official copy may be obtained from the [Clerk of the Commission, Document Control Center](#).

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, March 5, 2002

PETITION OF

CASE NO. PUA020002

VIRGINIA ELECTRIC AND POWER COMPANY

and

DOMINION NUCLEAR MARKETING II, INC.,
PLEASANTS ENERGY, LLC, ARMSTRONG ENERGY
LIMITED PARTNERSHIP, L.L.L.P., and TROY ENERGY, LLC

For approval of changes to wholesale power service agreements under Chapter 4 of Title 56 of the Code of Virginia and for an exemption of new wholesale power service agreements from the prior approval requirements of Chapter 4 of Title 56 of the Code of Virginia or, in the alternative, for approval of wholesale power service agreements and for expedited consideration

ORDER GRANTING APPROVAL

On January 23, 2002, Virginia Electric and Power Company (“Dominion Virginia Power” or “Company”), Pleasants Energy, LLC (“Pleasants”), Armstrong Energy Limited Partnership, L.L.L.P. (“Armstrong”), and Troy Energy, LLC (“Troy”) (Pleasants, Armstrong, and Troy are henceforth referenced as “the Project Entities”), and Dominion Nuclear Marketing II, Inc. (DNM II”), (collectively, the “Petitioners”) filed a petition with the State Corporation Commission (“Commission”) for expedited consideration and for approval of certain changes to the existing service arrangements and agreements between Dominion Virginia Power and DNM II and for approval of changes in previous approved agreements between Dominion Virginia Power and two of the Project Entities. Additionally, Dominion Virginia Power and the Project

Entities request an exemption from the prior approval requirement of Chapter 4 of Title 56 of the Code of Virginia or, in the alternative, for approval of new service agreements between Dominion Virginia Power and each of the Project Entities. On February 15, 2002, Dominion Virginia filed revisions to the service agreements with the Project Entities to clarify pricing requirements by the FERC.

Dominion Virginia Power is a Virginia public service corporation providing retail electric service to customers in its service territory in Virginia and North Carolina. Dominion Virginia Power is a wholly owned subsidiary of Dominion Resources, Inc. (“DRI”). DRI is a holding company as defined in the Public Utility Holding Company Act of 1935 (“the 1935 Act”) and subject to regulation as such by the Securities and Exchange Commission.

DNM II is a Delaware corporation engaged in the wholesale sale of electric power in interstate commerce, subject to regulation under the Federal Power Act by the Federal Energy Regulatory Commission (“FERC”). DNM II is a wholly owned, indirect subsidiary of DRI. DNM II is authorized by FERC to sell power at wholesale in interstate commerce at market-based rates. DNM II’s market-based rates tariff (“DNM II MR Tariff”) became effective November 24, 2000. Dominion Nuclear Connecticut, Inc. (“DNC”), created DNM II in connection with the acquisition of the Millstone Nuclear Generating Station.

In Case No. PUA010017, the Commission granted approval for Dominion Virginia Power to enter into a service agreement with DNM II through December 31, 2001. In Case No. PUA010060, by Order dated December 13, 2001, the Commission extended the approval period through December 31, 2002, and required that services provided by Dominion Virginia Power be at a price equal to the Company’s cost of providing the service plus a market return.

That agreement allows DNM II to sell, on a temporary basis, at wholesale to Dominion Virginia Power under a market-based rates tariff subsequently approved by the FERC. The power sold under that agreement represents a portion of the power generated from the Millstone Nuclear Generating Station in Connecticut and purchased by DNM II from Dominion Nuclear Connecticut, Inc. Dominion Nuclear Connecticut, Inc., recently purchased the Millstone generating assets.

Dominion Virginia Power states that it has long-standing market-based rate authority from the FERC and has many power sales contracts and transactions in place with third parties in the New England market. The above-referenced agreement allows DNM II to sell power out of the Millstone assets to Dominion Virginia Power that, in turn, sells the power to third parties in the New England market. The Petitioners represent that Dominion Virginia Power currently experiences no profits or losses on such purchases (that would be excluded from its wholesale and retail ratepayer accounts). In addition, the Petitioners state that such agreement renders Virginia Power harmless from economic loss for transactions under that agreement and that DNM II bears the cost of Dominion Virginia Power's expenses for negotiating sales of purchased power from DNM II to third parties.

Pleasants is a Delaware limited liability company that is scheduled to begin commercial operations between February and March of 2002 of a natural gas-fired generation facility of approximately 310 MW that consists of two units. That facility will be located in Pleasants County, West Virginia. Troy is a Delaware limited liability company that is developing an approximately 620 MW natural gas-fired peaking generation facility, consisting of four units, in Troy Township, Ohio. Armstrong is a Delaware limited liability limited partnership that is

developing an approximately 620 MW natural gas-fired generation facility, consisting of four units, in Armstrong County, Pennsylvania.

Each of the above-referenced Project Entities has been determined by the FERC to be an exempt wholesale generator under § 32 of the 1935 Act. Each of the Project Entities is an indirect, wholly owned subsidiary of DRI. In Case No. PUA010061, by Order dated December 7, 2001, the Commission granted approval of service agreements between the Company and each of the Project Entities for sales of test power to Dominion Virginia Power. The Commission's Order required that each of the Project Entities pay Dominion Virginia Power for services at a price equal to the higher of cost plus a yet-to-be-determined return or the market price. Under the approval granted in Case No. PUA010061, such sales were to be temporary, and no new transactions under the service agreements would be entered into after the end of 2002.

Agreement with DNM II

Dominion Virginia Power seeks to make permanent the relationship with DNM II by removing the December 31, 2002, expiration of approval of the above-referenced service agreement. DNM II by selling power from a single source, does not, and likely will not, have the market presence to compete.

Agreements with the Project Entities

Dominion Virginia Power and the Project Entities request an exemption from the prior approval requirement or, in the alternative, approval of amendments to the existing agreements. The Company, Armstrong, and Troy request approval of new language regarding pricing to comply with FERC requirements for the agreements with Armstrong and Troy for the purchase of test power. The Company and the Project Entities also request approval of amendments to the agreements that will allow Dominion Virginia Power to purchase power from each of the Project

Entities after the testing period. The Company and the Project Entities also request approval during commercial operation of the Project Entities for resale to purchasers in the wholesale market, as well as possible use by Dominion Virginia Power to meet system load requirements. Dominion Virginia Power and the Project Entities represent that such sales will allow the Project Entities to compete more effectively and will also provide additional flexibility to Dominion Virginia Power in meeting the Company's customers' needs. Dominion Virginia Power states that the agreements will follow FERC standards regarding pricing from a marketing affiliate to a utility.

The price for the purchased power is based on the price established by PJM Interconnection, LLC, at the PJM Western Hub in accordance with FERC pricing requirements. The revised language in the agreements for the sale of test power states that:

The price of test power purchased shall be up to Incremental Cost, and shall be no higher than the lowest price at which the Buyer can purchase from a non-affiliate based on the hourly locational marginal price ("LMP") established by PJM Interconnection, LLC, at the PJM Western Hub. Incremental cost consists of the cost of fuel and other variable costs. For purposes of calculating the price ceilings hereunder, the cost of transmission from the Seller to the PJM Western Hub to the Buyer shall not be included in Incremental Cost and shall not be added to the LMP.

The revised language in the agreements for commercial power states that:

The price of power sold to the Buyer shall be no higher than the hourly locational marginal price ("LMP") established by PJM Interconnection, LLC, at the PJM Western Hub. For purposes of calculating the LMP price ceiling hereunder, the cost of transmission from the Seller to the PJM Western Hub or from the PJM Western Hub to the Buyer shall not be added to the LMP.

The language used in the revised pricing specifically references the hourly LMP price at the PJM Western Hub and incorporates price cap language.¹

The agreements for purchasing commercial power do not include the previous provisions that require the Project Entities to hold Dominion Virginia Power harmless for economic losses for transactions under the agreements or requiring the Project Entities to compensate Dominion Virginia Power for expenses incurred to negotiate power sales to non-affiliate wholesale power purchasers. Dominion Virginia Power may choose not to purchase the power and will retain any margins from reselling power.

Pursuant to the agreements for Dominion Virginia Power's purchase of test power, Dominion Virginia Power and Armstrong and Troy each will maintain, for a period of not less than two years, records of transactions in sufficient detail to permit verification that the price for each such transaction is no higher than specified in the above-revised language. Pursuant to the agreements for Dominion Virginia Power's purchase of power during the Project Entities' commercial operation, the Project Entities and Dominion Virginia Power will each maintain, for a period of not less than two years, records of such transactions in sufficient detail to permit verification that the price for each such transaction is no higher than specified in the above revised language. Dominion Virginia Power states that it will abide by FERC's prohibitions that are reflected in its FERC-approved market-based rate tariff; specifically, the sharing of market information between it and the Project Entities.

¹ See as precedent *DPL Energy, Inc.*, 90 FERC ¶ 61,200 (February 5, 2000) (accepting power sales agreements for merchant generator to sell capacity and energy to an affiliated regulated utility at an Into-Cinergy index price cap and holding that tying the prices to an established regional market index provided adequate protection against affiliate abuse; *Allegheny Energy Unit 1 and 2, LLC, et al.*, 89 FERC ¶ 61,272 (December 16, 1999) (accepting market-based rate tariff that included provisions for the merchant generator to sell power, to affiliated utilities at a price capped at the hourly market price index posted by PJM for the PJM/Allegheny interface). See also, *Ameren Energy Marketing Company*, 96 FERC ¶ 61,306 (September 14, 2001) (order on rehearing) (stating that: "prices resulting from affiliate transactions by reference to competitive prices at recognized market hubs is an effective mechanism to prevent affiliate abuse").

THE COMMISSION, upon consideration of the petition and representations made by Dominion Virginia Power, DNM II, and the Project Entities and having been advised by its Staff, is of the opinion and finds that the revised service agreement between Dominion Virginia Power and DNM II is in the public interest and should be approved subject to the pricing provisions detailed herein. We believe that an exemption for the wholesale power agreements between Dominion Virginia Power and the Project Entities is not in the public interest and should, therefore, be denied. We do believe, however, that the revised agreements with the Project Entities, including the revised pricing language filed on February 15, 2002, are in the public interest and should, therefore, be approved.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to § 56-77 of the Code of Virginia, Dominion Virginia Power is hereby granted approval of the requested change in the Service Agreement approved in Case No. PUA010060. Such approval will make the agreement permanent with no expiration date so long as Dominion Virginia Power provides such services to DNM II at cost plus a market return.
- 2) Pursuant to § 56-77 of the Code of Virginia, the requested exemption from the prior approval requirement for the wholesale power service agreements between Dominion Virginia Power and the Project Entities is hereby denied.
- 3) Pursuant to § 56-77 of the Code of Virginia, approval is hereby granted for the revised agreements between Dominion Virginia Power and Armstrong and between Dominion Virginia Power and Troy with respect to the proposed language changes.

- 4) Pursuant to § 56-77 of the Code of Virginia, approval is hereby granted for the proposed service agreements between Dominion Virginia Power and Armstrong, Pleasants, and Troy upon commercial operation of the Project Entities to include language changes filed on February 15, 2002.
- 5) With respect to the Company's service agreement with DNM II, the Company shall maintain documentation supporting the determination of the market component.
- 6) Any changes in the terms and conditions of the service agreement between the Company and DNM II and the agreements between the Company and the Project Entities from those approved herein shall require further Commission approval.
- 7) The approvals granted herein shall have no ratemaking implications.
- 8) The approvals granted herein shall in no way be detrimental to Dominion Virginia Power's ability to make off-system sales in the New England market.
- 9) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code of Virginia hereafter.
- 10) The Commission reserves the authority to examine the books and records of any affiliate in connection with the approval granted herein whether or not the Commission regulates such affiliate.
- 11) The Company shall include the service agreements approved herein in its Annual Report of Affiliate Transactions to be submitted to the Director of Public Utility Accounting of the Commission by no later than May 1 of each year for the preceding calendar year, subject to extension by the Director of Public Utility Accounting of the Commission.

- 12) If Annual Informational and/or General Rate Case Filings are not based on a calendar year, then Dominion Virginia Power shall include the affiliate information contained in the Annual Report of Affiliate Transactions in such filings.
- 13) There appearing nothing further to be done in this matter, it hereby is dismissed.